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*Counsel to Elliott Management Corporation, on behalf of itself and
certain funds and accounts managed, advised, or sub-advised by it*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION,

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Reorganized Debtors.

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11

(Lead Case)

(Jointly Administered)

**NOTICE OF APPEAL AND STATEMENT
OF ELECTION TO HAVE APPEAL HEARD
BY THE DISTRICT COURT**

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors

1 **NOTICE IS HEREBY GIVEN** that Elliott Management Corporation, on behalf of itself
2 and certain funds and accounts managed, advised, or sub-advised by it (“Elliott”), by and through
3 its undersigned counsel, Ropes & Gray LLP, hereby appeals from (i) the *Order Disallowing*
4 *Administrative Expense Claims of Elliott Management Corporation* entered on October 22, 2020
5 [D.I. 9334] (the “Order”), and (ii) the related *Memorandum Decision Disallowing Administrative*
6 *Expense Claims* entered on October 22, 2020 [D.I. 9333] (the “Memorandum Decision”). Copies
7 of the foregoing are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

8 Pursuant to 28 U.S.C. § 158(c)(1) and Rule 8005(a) of the Federal Rules of Bankruptcy
9 Procedure, Elliott elects to have the appeal heard by the United States District Court for the
10 Northern District of California.

11 The names of all parties to the Order and Memorandum Decision and the names, addresses,
12 and telephone numbers of their respective attorneys are:

13 **APPELLANT**

Party	Counsel
Elliott Management Corporation, on behalf of itself and certain funds and accounts managed, advised, or sub-advised by it	ROPES & GRAY LLP Rocky C. Tsai (CA Bar No. 221452) 3 Embarcadero Center San Francisco, CA 94111 Telephone: (415) 315-6369 Facsimile: (415) 315-6350 Email: rocky.tsai@ropesgray.com ROPES & GRAY LLP Gregg M. Galardi (admitted <i>pro hac vice</i>) Keith H. Wofford (admitted <i>pro hac vice</i>) Daniel G. Egan (admitted <i>pro hac vice</i>) 1211 Avenue of the Americas New York, NY 10036 Telephone: (212) 596-9000 Facsimile: (212) 596-9090 Email: gregg.galardi@ropesgray.com, keith.wofford@ropesgray.com, and daniel.egan@ropesgray.com

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APPELLEE

Party	Counsel
Reorganized Debtors	<p>WEIL, GOTSHAL & MANGES LLP Stephen Karotkin (admitted <i>pro hac vice</i>) Richard W. Slack (admitted <i>pro hac vice</i>) Theodore E. Tsekerides (admitted <i>pro hac vice</i>) Jessica Liou (admitted <i>pro hac vice</i>) Matthew Goren (admitted <i>pro hac vice</i>) 767 Fifth Avenue New York, NY 10153-0119 Telephone: (212) 310-8000 Facsimile: (212) 310-8007 E-mail: stephen.karotkin@weil.com, richard.slack@weil.com, theodore.tsekerides@weil.com, jessica.liou@weil.com, and matthew.goren@weil.com</p> <p>KELLER & BENVENUTTI LLP Tobias S. Keller (SBN 151445) Peter J. Benvenuti (SBN 60566) Jane Kim (SBN 298192) 650 California Street, Suite 1900 San Francisco, CA 94108 Telephone: (415) 496-6723 Facsimile: (650) 636-9251 E-mail: tkeller@kellerbenvenuti.com, pbenvenuti@kellerbenvenuti.com, and jkim@kellerbenvenuti.com</p>

OTHER PARTIES TO THE ORDER AND MEMORANDUM DECISION

Party	Counsel
Canyon Capital Advisors LLC, Citadel Advisors LLC, Davidson Kempner Capital Management LP, Farallon Capital Management, L.L.C., Sculptor Master Fund, Ltd., Sculptor Enhanced Master Fund, Ltd., Sculptor Credit Opportunities Master Fund, Ltd., Sculptor GC Opportunities Master Fund, Ltd., Sculptor SC II, LP, Värde Partners, Inc., on behalf of themselves, and/or certain funds and accounts managed, advised, or sub-advised by them	<p>WILMER CUTLER PICKERING HALE AND DORR LLP Philip D. Anker (admitted <i>pro hac vice</i>) Allyson Pierce (Cal. Bar. No. 325060) 250 Greenwich Street New York, NY 10007 Telephone: (202) 230-8800 Facsimile: (202) 230-8888 philip.anker@wilmerhale.com allyson.pierce@wilmerhale.com</p> <p>WILMER CUTLER PICKERING HALE AND DORR LLP Craig Goldblatt (admitted <i>pro hac vice</i>) 1875 Pennsylvania Ave. NW Washington DC 20036 Telephone: (202) 663-6000 Facsimile: (202) 663-6363 craig.goldblatt@wilmerhale.com</p>
Pacific Investment Management Company LLC, as investment adviser or manager for certain funds and accounts that were Consenting Noteholders	<p>HOGAN LOVELLS US LLP David P. Simonds (Bar No. 214499) Edward J. McNeilly (Bar No. 314588) 1999 Avenue of the Stars, Suite 1400 Los Angeles, California 90067 Telephone: (310) 785-4600 Facsimile: (310) 785-4601 david.simonds@hoganlovells.com edward.mcneilly@hoganlovells.com</p> <p>HOGAN LOVELLS US LLP Michael C. Hefter (admitted <i>pro hac vice</i>) Matthew Ducharme (admitted <i>pro hac vice</i>) 390 Madison Avenue New York, New York 10017 Telephone: (212) 918-3000 Facsimile: (212) 918-3100 michael.hefter@hoganlovells.com matthew.ducharme@hoganlovells.com</p>

1
2 Dated: November 4, 2020

ROPES & GRAY LLP

3 By: /s/ Rocky C. Tsai

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18 *of itself and certain funds and accounts managed,*
19 *advised, or sub-advised by it*
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EXHIBIT A

Order



Signed and Filed: October 22, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
)
Reorganized Debtors.) Date: October 13, 2020
) Time: 10:30 a.m.
) Hearing held via Zoom
☐ Affects PG&E Corporation)
☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

**ORDER DISALLOWING ADMINISTRATIVE EXPENSE CLAIMS OF
ELLIOTT MANAGEMENT CORPORATION**

For the reasons stated in the Memorandum Decision
Disallowing Administrative Expense Claims issued this date, the
administrative expense claims asserted by Elliott Management
Corporation (Dkts. 8536 and 9032), and opposed by the
Reorganized Debtors, are DISALLOWED.

*** END OF ORDER***

EXHIBIT B

Memorandum Decision



Signed and Filed: October 22, 2020

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
)
Reorganized Debtors.) Date: October 13, 2020
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☐ Affects Pacific Gas and)
Electric Company)
☒ Affects both Debtors)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

MEMORANDUM DECISION DISALLOWING ADMINISTRATIVE EXPENSE CLAIMS

I. INTRODUCTION.

A group of claimants ("the RSA Noteholders") have asserted administrative expense claims arising from the Reorganized Debtors' purported breach of a post-petition restructuring agreement, estimated to be in the aggregate of \$250,000,000, against the Reorganized Debtors. For the reasons explained

1 below, the court will sustain the objections of the Reorganized
2 Debtors and disallow the claims.

3 **II. PARTIES.**

4 Elliott Management Corporation ("Elliott") on its own
5 behalf and on behalf of certain funds and accounts managed,
6 advised, or sub-advised by it, filed the *Motion for (i)*
7 *Allowance and Payment of an Administrative Expense Claim and*
8 *(ii) to the Extent Necessary, Reconsideration and Relief from*
9 *the Confirmation Order Pursuant to Federal Rule of Civil*
10 *Procedure 60(b)* on July 24, 2020 (Dkt. 8536). This motion and
11 request for allowance and payment of an administrative expense
12 is based on a purported breach by Debtors of a post-petition
13 restructuring agreement that they entered with certain
14 noteholders (the "Noteholder RSA"). Elliott was joined by
15 several similarly situated claimants who filed their *Joinder in*
16 *the Pending Elliott Motion and Request for Allowance and Payment*
17 *of Administrative Expense Claim* on August 4, 2020 (Dkt. 8663).¹
18 Pacific Investment Management Company LLC ("PIMCO") joined them
19 and Elliott when it filed its *Joinder of Pacific Investment*
20 *Management Company LLC in the Pending Elliott Motion and Request*
21 *for Allowance and Payment of Administrative Expense Claim* on
22 August 7, 2020 (Dkt. 8704).

23
24
25 ¹ Joining Elliott at that time were: Canyon Capital Advisors LLC, Citadel
26 Advisors LLC, Davidson Kempner Capital Management LP, Farallon Capital
27 Management, L.L.C., Sculptor Master Fund, Ltd., Sculptor Enhanced Master
28 Fund, Ltd., Sculptor Credit Opportunities Master Fund, Ltd., Sculptor GC
Opportunities Master Fund, Ltd., Sculptor SC II, LP, and Värde Partners,
Inc., on behalf of themselves, and/or certain funds and accounts managed,
advised, or sub-advised by them.

1 PG&E Corporation and Pacific Gas and Electric Company
2 ("Reorganized Debtors") filed *Reorganized Debtors' Initial*
3 *Opposition to Elliott Management Corporation's Motion for*
4 *Allowance and Payment of Administrative Expense Claim and*
5 *Reconsideration of Confirmation Order and Related Joinders* as an
6 initial opposition to Elliott's Motion on August 26, 2020 (Dkt.
7 8864). Elliott and the others filed their respective responses:
8 *Elliott Management Corporation's Response to Reorganized*
9 *Debtors' Initial Opposition to Motion for (i) Allowance and*
10 *Payment of an Administrative Expense Claim and (ii) to the*
11 *Extent Necessary, Reconsideration and Relief from the*
12 *Confirmation Order Pursuant to Federal Rule of Civil Procedure*
13 *60(b)* (Dkt. 9032) and *Additional RSA Noteholders' Response to*
14 *Reorganized Debtors' Initial Opposition to Elliott Motion for*
15 *Allowance and Payment of Administrative Expense Claim and*
16 *Reconsideration of Confirmation Order and Related Joinders* (Dkt.
17 9034) on September 14. Reorganized Debtors filed their *Reply in*
18 *Support of Initial Opposition to Elliott Management*
19 *Corporation's Motion for Allowance and Payment of Administrative*
20 *Expense Claim and Reconsideration of Confirmation Order and*
21 *Related Joinders* on September 25, 2020 (Dkt. 9143).

22 The motion came on for hearing on October 13, 2020.
23 Appearances were noted on the record.

24 **III. CRITICAL DATES, PLAN PROVISIONS AND PARAGRAPHS OF THE**
25 **OCP.**

26 On February 5, 2020, the court approved the Noteholder RSA
27 following extensive negotiations among the Reorganized Debtors
28

1 (prior to confirmation of their Plan), certain Shareholders
2 Proponents, and certain holders of funded debt claims.

3 The court entered its *Order Confirming Debtors' and*
4 *Shareholder Proponents' Joint Chapter 11 Plan of Reorganization*
5 *Dated June 19, 2020* (the "OCP") on June 20, 2020, confirming the
6 Debtors' and Shareholders Proponents' Joint Chapter 11 Plan of
7 Reorganization Dated June 19, 2020 (the "Plan") (Dkt. 8053). The
8 Plan became effective as of July 1, 2020 (the "Effective Date").

9 The critical and determinative provisions relevant to this
10 decision are as follows:

11 Plan, Article 2.1 **Administrative Expense Claims**

12 Plan, Article 10.8 **Exculpation**

13 Plan, Article 10.9(b) ***Releases by Holders of Claims***
14 ***and Interest***

15 OCP, ¶ 54 **Exculpation**

16 OCP, ¶ 56 **Releases by Holders of Claims and Interest.**

17 The Noteholder RSA contains a provision ("the best efforts
18 provision"} that the RSA Noteholders contend the Reorganized
19 Debtors breached, thus establishing a basis for their
20 administrative expense claims. That is found in Section
21 3(a)(iv) of the Noteholder RSA and obligates the debtors (prior
22 to confirmation and up to the Effective Date), and their
23 attorneys, advisors, and agents to:

24 use their best efforts, which shall not require
25 the Debtors to pay any consideration, breach any
26 obligations, or otherwise violate the terms of
27 any Backstop Commitment Letter, to cause various
28 Backstop Parties to transfer (whether by
assignment, participation, or otherwise) to

1 Consenting Noteholders that were parties to the
2 AHC Commitment Letter and any Consenting
3 Noteholders that were offered the opportunity to
4 participate in any subsequent commitment in
5 connection with the Alternative Plan, their
6 rights (subject to Section 7 hereof) (including
the right to receive fees thereunder) and
obligations under applicable Backstop Commitment
Letters relating to up to \$2 billion of
commitments.

7 **IV. PROCEDURAL STATUS.**

8 On August 11, 2020, the court entered an *Order Regarding*
9 *Scheduling with Respect to Elliott Management Corporation Motion*
10 *for Allowance and Payment of Administrative Expense Claim and*
11 *Related Joinders* (Dkt. 8746). There the court established a
12 procedure to determine whether the Reorganized Debtors could
13 prevail on the face of Elliott's motion, as joined by the
14 others, as a matter of law, avoiding the need for discovery or
15 other unnecessary delay. The Reorganized Debtors' challenge to
16 the administrative expense claims of the RSA Noteholders is a
17 contested matter under Fed. R. Bankr. P. 9014; that rule in turn
18 incorporates relevant provisions of the Federal Rules of Civil
19 Procedure via the Federal Rules of Bankruptcy Procedure.

20 Accordingly, the court treats the matters that were briefed
21 and argued on October 13, 2020 as the functional equivalent of a
22 motion for a judgment on the pleadings, taking all facts as
23 uncontested for these purposes. It determines as a matter of
24 law that the Reorganized Debtors are correct and their
25 objections should be sustained.

26 //

27 //

1 **V. DISCUSSION.**

2 **A. Administrative Expense Claims - Allowed or Disallowed**

3 The RSA Noteholders make much of a statement in Section 2.1
4 of the Plan that no administrative expense claims shall be
5 discharged and contend that their claim for breach of the
6 Noteholder RSA constitutes an administrative expense claim and
7 that Debtors' proposed treatment of the claim conflicts with
8 Articles 10.8 and 10.9 of the Plan and paragraphs 54 and 56 of
9 the OCP.

10 The court disagrees. Article 1.4 preserves expenses of
11 administration that are **allowable**; the corollary is that
12 administrative expense claims that are not allowable will be
13 discharged and, of course, will not be paid. As stated at the
14 outset, the court is disallowing the administrative expense
15 claims of the RSA Noteholders. The concern about discharge is
16 moot and no further action by the court is necessary as to this
17 issue.

18 **B. Negotiation and Pursuit of the Noteholder RSA**

19 In the *Memorandum of Decision - Confirmation of Debtors'*
20 *and Shareholder Proponents' Joint Chapter 11 Plan of*
21 *Reorganization* (Dkt. 8001), the court referred to the recent
22 Ninth Circuit *Blixseth* decision² in support of the proposition
23 that exculpation provisions permit protection of various parties
24 "who participated in the approval process", pointing out that
25 the exculpation provisions of the Plan cover a multitude of
26

27 ² *Blixseth v. Credit Suisse (In re Blixseth)*, 961 F.3d 1074 (9th Cir.
28 2020).

1 players, a number of documents and a number of events and
2 activities, consistent with the complexity and difficulties of
3 these cases. *Blixseth* itself cited *In re PWS Holding Corp.*, 228
4 F.3d 224 (3d Cir. 2000), for the notion that partial exculpation
5 is the norm for acts committed during the process of developing
6 and confirming a chapter 11 plan. Such provisions do not
7 conflict with 11 U.S.C. § 524(e).

8 For this reason, it is appropriate and consistent with
9 *Blixseth*, to extend exculpation to parties who participated,
10 negotiated and even "pursued" the Noteholder RSA and countless
11 other documents. But once the negotiation was completed, the
12 pursuit was over. Article 10.8 provides the safe harbor for all
13 who accomplished that end, for all who were "involved in the
14 process of developing and confirming [the Plan]". When the
15 Noteholder RSA was approved by the court on February 5, 2020
16 (Dkt. 5637) there was nothing further to negotiate or pursue
17 concerning that document. To use the vernacular, it was a "done
18 deal".

19 The RSA Noteholders are correct that they had the right to
20 contend at a later date that Reorganized Debtors, prior to or
21 concurrent with confirmation of the Plan, breached the best
22 efforts provision, subject to whatever defenses the Reorganized
23 Debtors may assert. Thus, the court concludes that the
24 exculpation provisions of Article 10.8, and the parallel
25 provisions of paragraph 54 of the OCP provide no relief for the
26 Reorganized Debtors.

27 //

1 **C. Releases by Holders of Claims and Interest**

2 In contrast to the narrow exculpation provisions dealing
3 with "negotiation and pursuit" of various documents and
4 including a fairly typical carveout for actual fraud or willful
5 misconduct, the release provisions and the parallel paragraph 56
6 of the OCP are quite a different story. There, there is no
7 carveout for actual fraud or willful misconduct nor any
8 limitation on the extent and breadth of what has been released.
9 The provisions are lengthy, somewhat redundant and very
10 lawyerlike. Below the court highlights certain provisions to
11 emphasize how far reaching they are and how readily they
12 encompass any alleged breach of the best efforts provision:

13 **"Released Parties** [including the Reorganized
14 Debtors] are deemed forever **released** and
15 discharged . . . from any and all claims, interests,
16 obligations, suits, judgments, damages, demands,
17 debts, rights, Causes of Action, losses, remedies,
18 and **liabilities whatsoever** . . . based on or
19 relating to, or in any manner arising from, in **whole**
20 **or in part**, the Debtors', the Fires', the Chapter 11
21 Cases . . . the subject matter of, or the
22 **transactions** or events giving rise to any
23 Claim . . . the business or contractual arrangements
24 between any Debtor and any Released Parties . . .
25 the **Plan Funding**, the Restructuring . . . before or
26 during the Chapter 11 Cases . . . the **Backstop**
27 **Commitment** Letters . . . the **Noteholder RSA** . . .
28 the negotiation, formulation, or preparation
of . . . the Plan and related agreements . . . , and
"other documents (including Plan documents) . . . ,
the **Noteholder RSA**"

25 Based upon these broad provisions the court determines that
26 the RSA Noteholders are bound by the releases they agreed to,
27 thus relieving the Reorganized Debtors of any exposure to claims
28

1 by the RSA Noteholders for breach of the Noteholder RSA and in
2 particular the best efforts provisions.

3 **D. Post Effective Date Claims**

4 The RSA Noteholders point to the preamble of Article
5 10.9(b) to maintain that somehow their right to assert the
6 administrative expense claims survives confirmation and the
7 Effective Date, and thus can be asserted, subject to substantive
8 defenses, at this juncture. The court rejects that argument.

9 Article 10.9(b) begins:

10 *"Releases by Holders of Claims and Interests. As*
11 *of and subject to the occurrence of the Effective*
12 *Date, except for the rights that remain in effect*
13 *from and after the Effective Date to enforce the*
Plan"

14 The RSA Noteholders argue that the Reorganized Debtors
15 breached the best efforts provision by not even attempting to
16 have any of the Backstop Commitment parties share with them any
17 of the fees and other entitlements up to \$2 billion of
18 commitments as provided in the portion of the Noteholder RSA
19 quoted above. The best efforts provision was a continuing
20 obligation for the duration of the RSA Support Period, defined
21 as running from the date of execution of the Noteholder RSA
22 through the Effective Date of the Plan. The provisions of
23 Section 3(a)(4) ended on that Effective Date and thus do not
24 come within the phrase "rights that **remain** in effect **from and**
25 **after** the Effective Date." The RSA Noteholders had no right to
26 complain about the Reorganized Debtors' lack of best efforts
27 once the obligations to exercise them ceased. The releases
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1 became effective at the same time that the right to assert best
2 efforts ended. Whether the RSA Noteholders could have asserted
3 some sort of a breach prior to the Effective Date, and prior to
4 the effectiveness of the broad releases, is pure speculation.
5 It did not happen. The after-the-fact assertions of the
6 administrative expense claims were barred as a matter of law by
7 the operation of the releases in Article 10.9(b) and OCP ¶ 56 as
8 of the Effective Date.

9 **E. Other Issues**

10 Because the court is disallowing the RSA Noteholders'
11 administrative expense claims for the reasons stated above, it
12 need not address the alternative theories of waiver or
13 forfeiture asserted by the Reorganized Debtors.

14 RSA Noteholders ask for alternative relief from the OCP.
15 Reorganized Debtors are correct that modification of the Plan
16 could only be attempted in accordance with 11 U.S.C. § 1127(b).
17 And the RSA Noteholders are correct that Fed. R. Bankr. P. 9024,
18 incorporating Fed. R. Civ. P. 60(b), has been a basis for relief
19 from orders confirming plans. On this record, however, nothing
20 justifies granting the extraordinary alternative relief they
21 seek.

22 The record does show that at a lightning fast pace in June,
23 2020, this complicated case proceeded quickly to meet state-
24 imposed deadlines and presented myriad obstacles for all
25 principal players and the court. Given that history, the court
26 believes that Elliott and the other concerned RSA Noteholders
27 could have dealt with procedural difficulties such as the
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1 original confirmation objection deadline or the fact that the
2 confirmation record had been closed by the time of the June 9,
3 2020, Backstop Motion. They could have sought some form of
4 expedited relief before entry of the OCP were they so included.

5 All major players are and were represented by some of the
6 most experienced and qualified bankruptcy counsel in the
7 country, and they know how to act quickly and effectively when
8 they need to. While the court will not engage in a theoretical
9 debate about whether one side waited in the weeds or the other
10 side tried to hide the ball, it will decline to excise its
11 discretion by reconsidering the OCP under Fed. R. Bankr. P. 9024
12 or otherwise.

13 **VI. CONCLUSION.**

14 The court is concurrently issuing orders disallowing the
15 administrative expense claims of Elliott, the Additional RSA
16 Noteholders and PIMCO for the reasons stated in this memorandum
17 decision.

18 *** END OF MEMORANDUM DECISION***
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